

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

VICTORIA L. FRAZIER,

Plaintiff

v.

CIVIL NO. 3:11cv497-JRS

**EXPERIAN INFORMATION
SOLUTIONS, INC., *et al.***

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE SUPPLEMENTAL AUTHORITY**

COMES NOW the Plaintiff, Victoria Frazier, by counsel, and respectfully moves the court for leave to file supplemental authority directly related to the Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment (Docket No. 33) and in support of Plaintiff's Reply (Docket No. 37). Under the rules of this court, the Plaintiff is not entitled to file any additional papers and therefore, under L. Rule 7(F)(1), seeks leave to file supplemental authority directly bearing on the issues presented in the Defendant's Opposition and the Plaintiff's Reply. *See, Dennis v. Wells Fargo Bank, N.A.*, Civ. No. 2:11CV401-MSD (E.D.Va. Oct. 24, 2011)(Docket No. 29)(granting leave to file supplemental authority in the form of a court's hearing transcript that was not available at the time the plaintiff's response was due). In this case, the Plaintiff seeks leave to file the Affidavit of Peter Swisher, who is the author of the Virginia Practice Series on Family Law and the doctrine of necessities.

The Defendant raised two issues in its opposition to Plaintiff's motion for summary judgment that may complicate an otherwise straightforward motion: (1) invoking the doctrine of necessities in order to justify its inaccurate reporting of a home loan owned by one spouse, but not the other; and (2) under Fed. R. Civ. P. 56(f), requesting summary judgment in Defendant's

favor based on its opposition to Plaintiff's motion for summary judgment. The only authority cited by the Defendant in support of its argument that the doctrine of necessities justified its inaccurate credit reporting was to the Virginia Practice Series on Family Law, § 4.7, which section was authored by Professor Peter Swisher of the University of Richmond.

In addition to her legal research and argument on this point, Plaintiff sought the independent judgment of the applicability of the doctrine of necessities from Professor Swisher, who unfortunately was abroad and unavailable to provide the attached affidavit at the time the Plaintiff's Reply was filed. Plaintiff recognizes that she is providing the affidavit of a law professor on a question of law to supplement authority presented in her motion. However, the only Virginia law cited by the Defendant in support of its novel theory was based on the section of the Virginia Practice Series authored by Peter Swisher and which goes directly to applicability of Defendant's argument to the facts of the case at hand. Because it was impossible for the Plaintiff to obtain Professor Swisher's affidavit prior to filing her Reply, because the issue presented is novel and lacks other authority, because the court would benefit from the information contained in the affidavit, and because the issue is one that could potentially be dispositive, good cause is shown for the filing of supplemental authority.

Respectfully Submitted,

Victoria Frazier,

/s/

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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